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Claims 1, 3 and 13 have been amended. Claims 2, 4, 5, 12, 14, and 15 have been deleted. Claims 1, 3, 6 through 11, 13, and 16 through 20 remain in the application. Reexamination and reconsideration of the application are requested in view of applicant arguments.

The examiner has rejected claims 1, 7, 9, 11, 17 and 19 under 35USC103(a) as being unpatentable over Johnson in view of Pomilia. The examiner states that Johnson discloses the elements of claim 1. However, it fails to disclose a bat of a smaller diameter than a conventional bat. Pomilia discloses a bat with a smaller diameter than a conventional bat. The examiner goes on to state that it would be obvious to one ordinarily skilled in the art at the time of the invention to employ the shape of Pomilia's device with the bat of Johnson in order to increase user satisfaction by permitting the user to improve their eye and hand coordination.

Claim 1 has currently been amended. The preamble to claim 1 now reads "a system for improving hitting comprising". The words "training bat" and "a user" have been deleted. In place of the words "a user" the words

"improving hitting" have been added. A new first element has been added. The first element states "a ball of the same size and shape as a baseball or softball". Basis for this is found in the specifications on page 8, lines 16 through 20. The second element has also been changed. the following words have been added to the beginning of the second element: "a baseball bat for hitting the ball comprising". Basis for this is found in the specifications on page 8, lines 16 through 20. The next paragraph has been amended. The words "tubular member" has been replaced with the words "cylindrical tube". The word "baseball" has been placed before "bat" in several places in the paragraph. After the word "bore" the words "of a consistent diameter" have been added. And the words "extending within" have been deleted and replaced with the word "extends". After the word "used" at the end of the paragraph the word "to strike the ball" have been added and the words "as a bat" have been eliminated. Basis for this is found in the specifications on page 8, lines 11 and 12. In the next paragraph after the words "weight members" the words "which vary as to length, density, and weight" have been added. After the word "fit" the word "slidably" has been added. After the word "within" the word "and nearly filled" have been deleted and after the word "bore" the words "and said weight members can be placed in the bore or removed from the bore and there are more weight

members than necessary to fill the bore of the cylindrical tube so that the weight members can be placed within the bore in different combinations and mixtures to change the balance and weight of the bat and make said weight and balance similar to a conventional bat. The words "that are positional within the bore of said tubular member and each individual weighted member can be fully removed from the bore of said tubular member and these weighted members allow an individual to change the weight of the tubular member and said weight members vary in length and weight and said weight members are positionable within the bore such that an individual placing the weight members within the tubular member can make any section of the tubular lighter or heavier to make the tubular member similar in weight and balance" have been eliminated. Basis for this is found in the specifications on page 10, lines 1 through 19.

One of the objects of applicant's batting system is that it is to be utilized by individuals of various age, size and skill level as pointed out in the specifications on page 5. Applicant's training system allows the bat to be easily changed in weight and balance to fit the specific needs of the child or adult who is using it. The individual can make the bat similar in weight and balance to the one he uses as when he hits in a ball game or he could make it heavier to build up strength. He can do both of these things with the same

system by just changing the combination or mixture of weights. Also, many different players on the same team can use the same bat and modify it to their specific needs by changing the combination and mixture of the weights within the bat. The weights are easily removed and replaced. The system comes with a plethora of weights to allow different individuals of different size, weight, age and skill level to use the batting system. Neither Johnson nor Pomilia does this. The bats in both Johnson and Pomilia, when placed on the market place are fixed. Their weight and balance is fixed. It cannot be changed as in applicant's system. Pomilia's is a hard outer shell with a foam filling. This foam filling cannot be changed once the bat is sold. Pomilia has a bat which has a bore through the middle in which weights are placed. These weights are spaced by cork. The cork is designed to fit within the bore to keep the weight in place. Thus it cannot be easily removed. The Johnson system is not like applicant's system. In Johnson's system, by removing the end cap you cannot pour out the weights. Also, Johnson's system does not come with a plethora of weights that can be used in different combination or different mixtures. The mixture and combination of weights in Johnson is set at the factory that makes the bat.

Thus, claim 1 differs from the claims of Johnson and Pomilia in the fact that it calls for a plurality of weight member that are more than

necessary to fill the bore of the cylindrical tube. And these weights can be slipped into the bore and removed from the bore easily and that they can be placed within the bore in a different combination and mixture to change the weight and balance of the bat. Also, the weighted members differ in length, density and weight from each other. Thus, clearly claim 1 as now written is patentable over Johnson in view of Pomelia.

Claims 7, 9, 11, 17 and 19 are ultimately dependent upon claim 1. Thus, the same argument that would apply to claim 1 would also apply to claim 7, 9, 11, 17 and 19 making claims 7, 9, 11, 17 and 19 patentable over Johnson in view of Pomelia.

The examiner has rejected claims 3 and 13 under 35USC103(a) as being unpatentable over Johnson in view of Pomelia and further in view of Franssen. Applicant has amended Claims 3 and 13. In claim 3 and 13 the words "said bore is comprised of a consistent diameter" have been deleted. In there place the words "the weight members are made out of several materials" have been added. Basis for this is found in the specification on page 10 lines 11 through 16. Claims 3 and 13 are ultimately dependent upon claim 1. Thus, the same argument that would apply to claim 1 would also apply to claim 3 and 13 making claims 3 and 13 patentable over Johnson in view of Pomelia. Franssen does not show a system where a plurality of

weights that can be removed and easily replaced or a plurality of weights that can be changed in mixture and combination. Thus claims 3 and 13 are patentable over Johnson in view of Pomelia and Franssen.

The examiner goes on to state that claim 8 and 18 are rejected under 35USC103(a) as being unpatentable over Johnson in view of Pomelia and further in view of Owens. The examiner says that Owens discloses a compression spring. Claims 8 and 12 are ultimately dependent upon claim 1. Thus, the same argument that would apply to claim 1 would also apply to claims 8 and 18 making claim 1 patentable over Johnson in view of Pomelia. Owens is a weighted bat. In Owens the end of the bat has been drilled out and weights have been placed within it. The object of Owens is to make a bat that is heavier and heavier on its end than a conventional bat. Claim 1 calls for a bat that has the weight and balance similar to a conventional bat. Owens does not show a bat like this. Owens' bat would not be used to hit a baseball. The balance of the bat would be off and would not allow an individual to hit the ball without stinging his hands. Thus, clearly claims 8 and 18 are ultimately dependent upon claim 1 and are clearly patentable over Pomelia in view of Owens and Johnson.

Claim 10 and 20 are rejected under 35USC103(a) as being unpatentable over Johnson in view of Pomelia and an official notice that

aluminum is well known in the art for making bats. Claims 10 and 20 are ultimately dependent upon claim 1, thus, the same argument that applied to claim 1 making claim 1 patentable over Johnson in view of Pomelia would also make claims 10 and 20 patentable over Johnson in view of Pomelia. The official notice only applies to making the bats out of aluminum and does not make the weights within the bat easily removable nor produces a plurality of weight that can be changed in combination and mixture or a plurality of weights that are more than necessary to fill the bore so that they can be easily changed in weight and mixture to allow the bat to be used by people of differing size, weight and skill level. Thus, clearly claims 10 and 20 are patentable over Johnson in view of Pomelia and the official notice.

The examiner has rejected claim 16 under 35USC103(a) as being unpatentable over Johnson in view of Pomelia and further in view of Owens. Claim 16 is ultimately dependent upon claim 1. Thus, the same argument that applies to claim 1 would also apply to claim 16 making claim 16 patentable over Johnson in view of Pomelia.

Further, applicant argues that the same argument that would apply to claim 8 and 18 will also apply to claim 16. Clearly, the argument in claim 8 and 18 showed that claim 1 was patentable over Johnson in view of Pomelia

and Owens. Thus, claim 16 is clearly patentable over Johnson in view of Pomelia and Owens.

Furthermore, it is believed that the claims as amended define an invention which is unobvious over US Patents to Johnson, Pomelia, Owens, and Franssen either taken singularly or in combination. None of these references suggests a plurality of weighted members that differ in weight, length, and density that are used to fill the bore of the bat. There are more weighted members than necessary to fill the bore of the bat so that individuals can use different combinations and mixtures of these weighted members to create a bat in similar weight and balance to a conventional bat that can be used by individuals of different weight, size and skill level. Applicant believes that his bat is the ideal training bat. It can be easily modified right on the baseball diamond to fit several individuals on the team. It also can be modified as a child grows in size, weight and skill level and thus is ideal for individuals and for teams. Applicant believes that this is just what has been sought after by those skilled in the art.

In view of the above it is submitted that the claims are in condition for allowance. Reconsideration of the rejection and objections is requested.

Allowance of claim 1, 6 through 11, 13, 16 and 20 at an early date is solicited.


Respectfully submitted,

Jerry Semer
Attorney at Law
617 Croghan Street
Fremont, Ohio 43420
419-332-2221
#33,087
Respectfully submitted,

Jerry Semer
Attorney at Law
617 Croghan Street
Fremont, Ohio 43420
419-332-2221
#33,087

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